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Federal Communications Commission  
Office of the Secretary

November 20, 2007

*Via Hand Delivery*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

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Re: Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172

Dear Ms. Dortch:

I am writing in response to several letters that Alpheus *et al.* ("the CLECs") have filed in the above-captioned proceeding.<sup>1</sup> Verizon has submitted voluminous data demonstrating there is extensive facilities-based competition in each of the six MSAs, and has updated that information throughout the course of this proceeding in response to new developments. Although the CLECs criticize the evidence Verizon has submitted,

<sup>1</sup> See Letter from Andrew Lipman *et al.*, Bingham McCutchen LLP, Counsel for Alpheus *et al.*, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 2, 2007) ("CLEC Nov. 2 Letter"); Letter from Andrew Lipman *et al.*, Bingham McCutchen LLP, Counsel for Alpheus *et al.*, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 6, 2007) ("CLEC Nov. 6 Letter"); Letter from Andrew Lipman *et al.*, Bingham McCutchen LLP, Counsel for Alpheus *et al.*, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 9, 2007) ("CLEC Nov. 9 Letter").

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they repeat the pattern of these carriers refusing to provide relevant data of their own. In any event, the CLECs' claims are misplaced.

The CLECs first criticize Verizon's October 10, 2007 submission, which updated the record in this proceeding with some of the data that Verizon filed in the special access proceeding (WC Docket No. 05-25). Verizon's submission included maps detailing CLEC fiber, CLEC lit buildings, and wireless cell sites for each of the six MSAs for which Verizon is seeking forbearance; lists of known CLEC fiber providers and the number of known CLEC-lit buildings in each of the six MSAs; comparisons of competitors' use of special access, UNEs, and Wholesale Advantage service in each of the six MSAs; profiles of competitive providers of high-capacity services; websites of competitive providers of high-capacity services; and data showing that, in each of the six MSAs, competitors are using Verizon's special access service to compete successfully. *See* Letter from Joseph Jackson, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-172 (FCC filed Oct. 10, 2007) ("Verizon Oct. 10 Ex Parte").

First, the CLECs argue that Verizon's October 10<sup>th</sup> submission does not include data at the wire center level, and therefore, pursuant to the *Omaha Forbearance Order*, is relevant only to Verizon's request for forbearance from dominant carrier regulation, not unbundling regulation. CLEC Nov. 2 Letter at 1. The CLECs are wrong. The maps Verizon submitted contained wire center boundaries, and therefore show the presence of competitive fiber and CLEC-lit buildings within Verizon's wire center in each of the six MSAs.<sup>2</sup> In addition, Verizon provided lists of the wire centers in which competing carriers have obtained E911 listings and where they have obtained collocation. Lew/Wimsatt/Garzillo Reply Decl., Exhs. 3.A-3.F.

Second, the CLECs complain about Verizon's data on competitors' use of special access. CLEC Nov. 2 Letter at 5-6. Verizon provided data showing that, in each of the six MSAs, competing carriers as a whole – excluding major long-distance and wireless carriers – use special access much more extensively than UNEs with respect to DS1 and DS3 services. *See* Verizon Oct. 10 Ex Parte at Exh. 10. Verizon also provided data showing that in each of the six MSAs a representative example number of major competitors were using special access far more extensively than UNEs for their high-capacity services (12 carriers in New York, nine in Philadelphia, eight in Boston, Pittsburgh, and Providence, and seven in Virginia Beach). *See id.* at Exh. 3. With respect to DS0 services, Verizon demonstrated that competing carriers as a whole – again excluding major long-distance and wireless carriers – were using predominantly non-UNE services such as Wholesale Advantage. *See id.* at Exh. 10.

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<sup>2</sup> The CLECs also claim that the scale of the maps "make[s] it impossible to identify any particular streets or buildings." CLEC Nov. 2 Letter at 2. The CLECs appear to be referring to the MSA-level maps that Verizon submitted. But the Google Earth maps Verizon submitted show street-level and in some cases building-level detail for the downtown areas where competitive fiber is most heavily concentrated. In any event, the CLECs' claim presumes that it is necessary to conduct a building-specific or street-specific analysis, which is contrary to settled precedent.

The CLECs argue that the sample of CLECs for which Verizon provided data is “underrepresentative of the extent to which competitors rely on special access for local service because most of the carriers listed are primarily IXCs or wireless providers.” CLEC Nov. 2 Letter at 5. That is not true. Of the 13 separate carriers that are profiled across the six MSAs, no more than three can properly be considered “primarily” an IXC or wireless carrier. These three are [Begin Highly Confidential] [End Highly Confidential]. Two other carriers – [Begin Highly Confidential] [End Highly Confidential] provide long-distance services and, in the case of [Begin Highly Confidential] [End Highly Confidential] wireless services, but also compete for a wide variety of other services in Verizon’s region. The other eight carriers are [Begin Highly Confidential] [End Highly Confidential], each of which serves customers using predominantly special access, not UNEs. *See* Verizon Oct. 10 Ex Parte at Exh. 3.

The CLECs next claim that, with respect to DS0 services, “[t]he demand for Wholesale Advantage does not reduce the UNE demand percentages and, if anything, increases it” because Wholesale Advantage “includes a UNE loop as a component of the service.” CLEC Nov. 2 Letter at 6. This, too, is false and also contrary to how the Commission treated comparable services in Omaha. There is no UNE loop or other UNE component that is part of Verizon’s Wholesale Advantage service. That service is sold pursuant to commercially negotiated agreements, and neither the loop nor any other portion is purchased as a UNE pursuant to an interconnection agreement. Consistent with this fact, the Commission in Omaha treated Qwest’s UNE-P replacement service (known as QPP) as non-UNE-based competition, and relied on the fact that CLECs were using this service to compete as further evidence to justify the elimination of unbundling requirements. *See Omaha Forbearance Order* ¶¶ 67-68. As Verizon has explained, the same approach is therefore warranted here. *See* Verizon Reply at 32-33.

Third, the CLECs argue that Verizon’s profiles of competitive providers and materials from CLEC websites should be disregarded because they do not show the extent to which these competitors “provide service in any MSA or wire center.” CLEC Nov. 2 Letter at 7. But these materials were not intended for that purpose, but instead to illustrate the wide range of competitors that Verizon faces and to show that, in areas where individual competitors do compete, they offer a wide range of services. Other data that Verizon has submitted – such as fiber maps, cable franchise area maps, lit building lists, E911 listings, and special access purchases from Verizon – show which of the profiled competitors are operating in the six MSAs and indicate the wire centers within those MSAs in which they have a competitive presence. As these data show, there are a large number of competitive providers in each of the six MSAs. The CLECs’ own telephone survey confirms this. The CLECs claim that they “called the marketing department of nearly every firm” that Verizon profiled “and asked whether it offered service in Virginia Beach.” *Id.* According to the CLECs, at least five carriers confirmed they are providing service in Virginia Beach. *See id.*

Fourth, the CLECs claim that Verizon’s list of CLEC-lit buildings is “unreliable and inaccurate and may not be relied upon by the Commission in this proceeding.” CLEC Nov. 9 Letter at 1. As Verizon has previously explained, this list was based on

data from GeoResults. Verizon has submitted GeoResults data in this proceeding, because Verizon does not have direct evidence of buildings that CLECs serve using their own facilities. CLECs have refused to provide such data here, despite Verizon's repeated complaints. Verizon has explained that, although GeoResults data are generally reliable, they tend to be incomplete, and likely understate the extent to which competing carriers have deployed fiber. The filings of other competing carriers in this proceeding confirm this. For example, in stark contrast to the position taken by *Alpheus et al.*, Covad and XO have recently filed a letter praising the "completeness and reliability of the GeoResults data submitted in this proceeding," but admitting that it excludes data from two of the top 30 CLECs as well as from smaller providers. *See* Letter from Genevieve Morelli, Kelley Drye & Warren, LLP, to Marlene Dortch, FCC, WC Docket No. 06-172 at 1, 4 (Nov. 13, 2007).

The CLECs attach to their letter declarations from two of the 18 signatories to their letters – Integra and McLeodUSA – stating that they do not have lit buildings in any of the six MSAs, despite the fact that GeoResults indicates that they do. But this is a very minor discrepancy, involving only **[Begin Confidential] [End Confidential]** Measured against the thousands of buildings in the GeoResults database, this hardly forms a basis for the Commission to ignore these data. This is particularly true given that the other 16 signatories to the CLEC's letter have raised no objections to the data and have failed to provide their own counts of lit buildings, which surely gives rise to an inference that GeoResults provides either accurate or understated results for these carriers.

Finally, the CLECs criticize Verizon's submission that converted to wire centers the rate-center and zip-code based data that Time Warner Cable submitted regarding the customers it serves and is capable of serving. *See* CLEC Nov. 6 Letter at 1-4. This is yet another attempt to hide from the Commission data that are not only relevant, but also show that competition is far more widespread than the CLECs have represented. *See* Letter from Evan Leo, Kellogg, Huber, Hansen, Todd, Evans & Figel, to Marlene Dortch, FCC (Nov. 16, 2007). The CLECs' claim boils down to the argument that, because cable companies do not collect data on a wire center level, the Commission should disregard such information. There is no basis for such an approach. Although the process of converting zip codes and rate centers to wire centers may not be exact, Verizon's approach is sound methodologically and produces reasonably accurate results. The majority of rate centers map directly to a single wire center. With respect to zip codes and rate centers that overlap with multiple wire centers, Verizon allocates totals proportionately to wire centers based on their relative numbers of access lines. The CLECs fail to explain why this methodology is flawed, or to offer any alternative approach that makes more sense. In fact, Time Warner Cable itself had no objections to Verizon's methodology, and in a more recent filing re-submitting its data and provided additional data on wire center level using Verizon's methodology. *See* Letter from Brian Murray, Latham & Watkins, LLP, Counsel for Time Warner Cable, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 5, 2007). Comcast has likewise used Verizon's methodology in a recent submission of its data. *See* Letter from Michael Sloan, Davis Wright Tremaine, LLP, Counsel for Comcast, to Marlene Dortch, FCC, WC Docket No. 06-172 (Nov. 9, 2007). There is accordingly no basis for the Commission to disregard

the data these cable companies have filed. To the contrary, these data confirm that cable companies are capable of providing voice services to most consumers within their franchise territories, and have already won a significant number of customers.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Jackson". The signature is written in black ink and is positioned below the word "Sincerely,".

cc: Nick Alexander  
Marcus Maher  
Dana Shaffer  
Don Stockdale